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17 Attorneys for NINTENDO OF AMERICA INC., NINTENDO
18 CO., LTD., MACRONIX AMERICA, INC., AND
19 MACRONIX INTERNATIONAL CO., LTD.

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **WESTERN DIVISION**

23 CREATIVE INTEGRATED
24 SYSTEMS, INC.,

25 Plaintiff,

26 v.

27 NINTENDO OF AMERICA INC.;
28 NINTENDO CO., LTD.; and
MACRONIX INTERNATIONAL
CO., LTD.,

Defendants.

Case No. 2:10-CV-2735 PA (VBK)

**DEFENDANTS' MOTION FOR
JUDGMENT AS A MATTER OF LAW
OF PLAINTIFF'S FAILURE TO
CORROBORATE A CONCEPTION
DATE EARLIER THAN THE FILING
DATE OF THE '497 PATENT**

Trial: March 4, 2014
Courtroom: 15

Judge: Hon. Percy Anderson

1 Defendants Nintendo of America Inc., Nintendo Co., Ltd., and Macronix
 2 International Co., Ltd. ("Defendants") respectfully submit this memorandum in
 3 support of its motion for judgment as a matter of law ("JMOL") under Fed. R. Civ. P.
 4 50(a) of Plaintiff's failure to corroborate a conception date earlier than the filing date
 5 of the U.S. Patent No. 5,241,497 patent (the '497 Patent) (i.e., June 14, 1990).

6 Under Rule 50(a), "[i]f a party has been fully heard on an issue during a jury
 7 trial and the court finds that a reasonable jury would not have a legally sufficient
 8 evidentiary basis to find for the party on that issue, the court may: (A) resolve the
 9 issue against the party; and (B) grant a motion for judgment as a matter of law against
 10 the party on a claim or defense that, under controlling law, can be maintained or
 11 defeated only with a favorable finding on that issue." Fed. R. Civ. P. 50(a)(1).

12 Where a party seeks to show conception though oral testimony of an inventor, it
 13 must produce independent evidence corroborating that testimony. *Aspex Eyewear v.*
 14 *Revolution Eyewear, Inc.*, 2001 U.S. Dist. LEXIS 25830, *18 (C.D. Cal. June 4, 2001)
 15 (citing *Purdue Pharma L.P. v. Boehringer Ingelheim, GMBH*, 237 F.3d 1359, 1365
 16 (Fed. Cir. 2001)). "Proof of an alleged inventor's conception and reduction to practice
 17 is a heavy one and requires full corroboration by other than the inventor's own self-
 18 serving testimony or records." *Id.* See also *Brown v. Barbacid*, 276 F.3d 1327, 1335
 19 (Fed. Cir. 2002) ("[I]ndependent evidence must corroborate Dr. Reiss' testimony of
 20 conception or actual reduction to practice. The Board did not err in holding that an
 21 inventor's own unwitnessed documentation does not corroborate an inventor's
 22 testimony about inventive facts."); *Lacks Indus. v. McKechnie Vehicle Components*
 23 *USA, Inc.*, 322 F.3d 1335, 1350 (Fed. Cir. 2003) (Addressing first the cross-
 24 corroboration of oral testimony, we conclude that the Special Master rightly refused to
 25 accept it as adequate. A review of the relevant case law reveals a clear requirement
 26 that such oral testimony by interested parties must be corroborated by documentary
 27 testimony. Starting with the Supreme Court's decision in *The Barbed Wire Patent*
 28 *Case*, 143 U.S. 275, 36 L. Ed. 154, 12 S. Ct. 443, 1892 Dec. Comm'r Pat. 299 (1882),

1 and ending with our recent decision in *Union Carbide v. Shell Oil Co.*, 308 F.3d 1167,
 2 1189, 64 USPQ2d 1545, 1560 (Fed. Cir. 2002), courts have consistently required
 3 documentary corroboration of oral testimony by interested parties presented to
 4 invalidate a patent).

5 In this case, Plaintiff has failed to provide any evidence that would corroborate
 6 a conception date earlier than June 14, 1990, which is the earliest effective filing date
 7 of the '497 Patent. *See* Ex. 1. In particular, Mr. Minney testified that he had no
 8 recollection of the events that took place during the time frame of the alleged
 9 conception date. With respect to Mr. Fujioka, Mr. Fujioka is an interested party, and
 10 Plaintiff has failed to provide any documents that would corroborate his oral
 11 testimony. With respect to Mr. Komarek, proof of an alleged inventor's conception
 12 and reduction to practice is a heavy one and requires full corroboration by *other than*
 13 *the inventor's own self-serving testimony or records*. *Aspex Eyewear*, 2001 U.S.
 14 Dist. LEXIS 25830, *18 (C.D. Cal. June 4, 2001).

15 For the foregoing reasons, Defendants move for judgment as a matter of law of
 16 Plaintiff's failure to corroborate a conception date earlier than the filing date of the
 17 '497 patent.

18
 19 Dated: March 12, 2014

Respectfully submitted:

20 **BAKER & McKENZIE LLP**

21
 22 By: /s/ Daniel A. Tallitsch
 23 Daniel A. Tallitsch

24 Attorneys for Defendants Nintendo of
 25 America Inc., Nintendo Co., Ltd., and
 26 Macronix International Co., Ltd.
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